

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

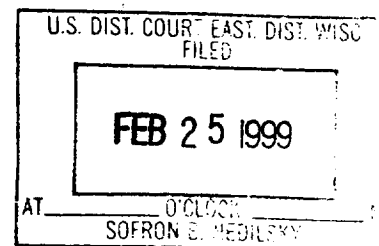
Plaintiff,

v.

CASE NO. 98-C-1199

WISCONSIN CENTRAL LIMITED,
WALTERS EXCAVATING AND
WRECKING INC., and
RICHARD A. WALTERS,

Defendants.



ORDER FOR ENTRY OF CONSENT DECREE

IT IS HEREBY ORDERED that the Consent Decree signed by the Plaintiff United States and Defendants Wisconsin Central Limited, Walters Excavating and Wrecking, Inc., and Richard Walters, and lodged with this Court on December 9, 1998, is approved, and that judgment be entered for the plaintiff and against the defendants, their officers, directors, employees, agents, successors and assigns of the corporate defendants, as well as the agents of the individual defendants.

Dated at Milwaukee, Wisconsin, this 25th of February, 1999.

BY THE COURT

A handwritten signature in black ink, appearing to be "C. N. Clevert", written over a horizontal line.

C. N. CLEVERT
U. S. District Judge

DATED: 2/25/99
K. J. L. Deputy

United States District Court

EASTERN DISTRICT OF WISCONSIN

JUDGMENT IN A CIVIL CASE

UNITED STATES OF AMERICA,

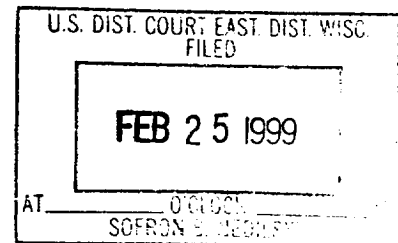
Plaintiff,

v.

CASE NO. 98-C-1199

WISCONSIN CENTRAL LIMITED,
WALTERS EXCAVATING AND
WRECKING INC., and
RICHARD A. WALTERS,

Defendants.



This action has come before the court, and the parties have
consented to entry of judgment.

Now, therefore,

IT IS ORDERED AND ADJUDGED AND DECREED in favor of the
plaintiff United States of America and against the defendants (identified below),
their officers, directors, employees, agents, successors and assigns of the
corporate defendants, as follows:

Defendant Wisconsin Central Limited ("Wisconsin Central") is an
Illinois corporation doing business in Wisconsin and with its principal place of
business in Rosemont, Illinois.

Defendant Walters Excavating and Wrecking, Inc. ("Walters

material as ACM without sampling and analysis. However, before that Defendant may treat any Suspect ACM as non-ACM, that Defendant shall collect and analyze samples of all Suspect ACM in accordance with the Sampling Protocol. A Defendant shall not begin any activity which might disturb or preclude access to any ACM or Suspect ACM at the facility, including any activity which might disturb or preclude access to any ACM or Suspect ACM in adjoining structures or buildings not directly involved in the Demolition or Renovation Operation, until:

- a. the results of laboratory analyses conducted by an NIST or EPA Accredited Laboratory are available establishing that the Suspect ACM is non-ACM; or
- b. all ACM has been completely removed from the Facility by a person trained in accordance with Paragraph 32, certified, and, if required, licensed in asbestos removal procedures (hereinafter "Asbestos Abatement Worker").

3. If any ACM or suspect ACM is discovered at a facility owned or operated by a Defendant after a Demolition or Renovation Operation is already underway, the Defendant shall immediately cease all work which could disturb the ACM or Suspect ACM. The Defendant shall not resume any activities which might disturb or preclude access to the ACM or Suspect ACM for removal until the material has been sampled, analyzed and, if found to be ACM, removed by a trained Asbestos Abatement Worker. Nothing in this Paragraph

Part B. Required Asbestos Training

7. No Defendant shall engage any person in the Demolition or Renovation of any Facility containing ACM ("Demolition Personnel"), or, with respect to a Defendant, to inspect a Facility for the presence of ACM or Suspect ACM, unless that person has successfully completed an EPA-approved, three-day or four-day course of asbestos training as hereinafter specified:

a. Inspector Training: A Defendant shall only engage a person(s) to inspect a Facility for ACM or Suspect ACM ("Demolition Personnel") who has successfully completed an EPA-approved, three-day inspector course of study. The course material of the EPA-approved, three-day inspector course shall include, but not be limited to: (1) federal, state, and local laws and regulations governing asbestos removal, notification, handling, transport, and disposal requirements; (2) practices and procedures for detection and sampling of asbestos, control of asbestos fiber releases, worker protection, equipment decontamination, and (3) health effects of asbestos exposure.

b. Asbestos Abatement Worker Training: A Defendant shall only engage a person(s) to perform maintenance, renovation, asbestos stripping, removal, handling, clean-up, air monitoring, transportation, or disposal activities, including maintenance personnel who can reasonably be expected to come into contact with asbestos during their normal duties, if that person has successfully completed a four-day, EPA-

that worker discovers ACM or Suspect ACM while working at a Facility, including a description of safety measures that worker can take in the event of site or personal contamination.

11. Within thirty (30) days of entry of this Decree, Defendants' Demolition Personnel must receive clear instructions that they are not to handle, move, or otherwise disturb any ACM or Suspect ACM unless they are specially trained, licensed, and authorized to do so. New employees shall be given such instruction within ten (10) days of being hired.

PENALTY

12. Defendant Wisconsin Central shall pay a civil penalty of EIGHTY-FIVE THOUSAND dollars (\$85,000) to the United States in settlement of all the civil violations alleged in the Complaint in this action, up to December 9, 1998.

13. Defendants Walters Excavating and Richard A. Walters shall pay a civil penalty of TWENTY-FIVE THOUSAND dollars (\$25,000) to the United States in settlement of all the civil violations alleged in the Complaint in this action, up to December 9, 1998.

14. All payments shall be made within 30 days after entry of this Decree, by cashier's or certified check, made payable to "Treasurer, United States of America," bearing a notation as to the civil docket number of this action, and sent to:

penalty, that Defendant shall include in any subsequent payment simple interest calculated from a date 30 days after entry of this Decree or from the date any stipulated penalty is due. Interest shall be calculated at the statutory judgment interest rate provided for in 31 U.S.C. § 3717, and, shall be in addition to any penalty or other sanction the Court may impose in the event of nonpayment.

PENALTIES

17. If a Defendant fails to comply with any of the terms of this Decree, that Defendant shall be liable for Stipulated Penalties as set forth below:

a. Failure to comply with any of the training requirements in Paragraphs 7 through 11: \$ 1,000 per person;

b. Failure to comply with any applicable requirement of this Decree not covered in subparagraph a., above, including violations of the asbestos NESHAP and the Control of Particulate Emissions Rules of the Wisconsin SIP: \$2,000 per day of violation. Stipulated penalties shall be in addition to any other remedies or sanctions, including but not limited to civil penalties available to the United States by reason of a Defendant's failure to comply with the requirements of this Decree.

18. Defendants shall pay any stipulated penalty, without demand, within thirty (30) days of a violation. Payment should be made by cashier's or certified check, made payable to "Treasurer, United States of America," bearing a notation as to the civil docket number of this action, and sent to:

- a) Interest at the percentage rate established by the Department of Treasury pursuant to 31 U.S.C. § 3717, for any period after the due date;
- b) A handling charge of \$20.00 at the end of the first thirty (30) day late period and a handling charge of \$ 1 0. 00 for each thirty (3 0) day late period thereafter; and,
- c) A six percent per annum penalty charge if the penalty is not paid within ninety (90) days of the due date.

NOTICES. RECORDS AND SUBMISSIONS

20. All notices, records, and submissions required by this Decree, as applicable and except as expressly provided herein, shall be certified and in writing. Except as expressly provided herein, each Defendant shall keep all records required to be maintained by this Decree for the duration of this Decree, and shall maintain the same at its principal place of business or on site, as appropriate. Each Defendant shall make all records required by this Decree available to EPA upon request. All notices and submissions required to be made by the Defendants to EPA or the United States Attorney's Office shall indicate the case action number for this case, and shall be postmarked (using first class certified or registered mail, postage prepaid) or hand delivered by the applicable due date to the following addresses as applicable:

- a. For the United States Attorney, to:
United States Attorney
517 East Wisconsin Avenue, Room 530
Milwaukee, Wisconsin 53202

resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree.

23. Any dispute which arises under or with respect to this Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 calendar days from the time the dispute arises, unless the parties agree in writing to extend the period for informal negotiations. The dispute shall be considered to have arisen when one party receives from the other party a written Notice of Dispute.

24. If the parties cannot resolve their dispute within 30 calendar days from the time the dispute arises, or within any extended time period for informal negotiations provided through written agreement of the parties, the United States shall notify the party of its final position in writing. Unless the party files a petition with this Court for resolution of the dispute within 10 days after receipt in writing of the United States' final position, the party shall follow the final position of the United States. The petition shall set out the nature of the dispute and the relief requested and shall specifically refer to this Paragraph of this Decree. The United States shall have 10 days to file a response to the Petition.

FORCE MAJEURE

25. "Force Majeure" for purpose of this Decree is defined as any event arising from causes beyond the control of the Defendants or their contractors

itself, extend the time for performance of any other obligations. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA shall notify the Defendant in writing of its decision. If the Defendant disagrees with any decisions made by EPA pursuant to this Paragraph, the Defendant may invoke the procedures in the Dispute Resolution Section of this Decree.

28. A Defendant's failure to take measures to minimize any delay or to timely comply with the notice provisions of this section shall constitute a waiver of the Defendant's rights to invoke the provisions of this section (Force Majeure).

GENERAL PROVISIONS

29. Nothing contained herein shall be construed to prevent or limit the rights of the United States to obtain any other remedy, sanction, or relief which may be available to it by virtue of the Defendants' failure to comply with this Decree, the Clean Air Act, or the Asbestos NESHAP. The United States expressly reserves all remedies available to it for violations of the Act not specifically pled in the Complaint filed in this action.

30. This Decree in no way affects or relieves the Defendants of their responsibility to comply with all applicable Federal, State or local laws and regulations, including the asbestos NESHAP regulations at 40 C.F.R. Part 61, Subpart M.

31. Nothing in this Decree shall constitute or be construed as a

36. The Court retains jurisdiction to modify and enforce the provisions of this Decree, to resolve disputes arising hereunder, and to take any action necessary or appropriate for the interpretation or execution of this Decree. Any of the parties to this Decree may petition the Court to invoke this Paragraph.

WAIVER

37. The Defendants waive all potential claims and/or counterclaims against the United States arising out of or in any way related to the facts and circumstances of this civil action.

TERMINATION

38. After a Defendant has maintained continuous compliance with the Act, the asbestos NESHAP, the Control of Particulate Emissions Rules of the Wisconsin SIP, and this Decree for a period of one (1) year from the date of its entry, that Defendant shall so certify to the U.S. EPA. Jurisdiction of the Court for the purposes of effectuating this Decree shall terminate ninety (90) days after receipt by the U.S. EPA of such certification unless U.S. EPA notifies the Court and the Defendant of its objection to said certification. The United States reserves its right to seek extension of compliance with this Decree by a Defendant in the event of any violation of this Decree by a Defendant, or to fully effectuate the purposes of this Decree. In the event that this Court must resolve a dispute concerning termination of this Decree, the Defendant who moves, petitions or otherwise requests that this Court terminate this Decree shall have the burden of proving that the moving Defendant: has maintained full

contain asbestos and could be affected directly or indirectly by the Operation.

B. SAMPLING

1. Asbestos bulk samples shall be collected only by a person who has completed the Asbestos Inspection training specified in Paragraph 7 of this Decree..
2. All asbestos bulk samples shall be collected in a random manner, using the grid system described in the EPA "Pink Book" and shall be made up of a core which has fully penetrated the Suspect ACM.
3. If the homogeneous area of the Suspect ACM is less than 1000 linear or 1000 square feet, at least three (3) bulk samples shall be collected from each homogeneous area.
4. If the homogeneous area of Suspect ACM is at least 1000 linear or 1000 square feet but less than 5000 square feet, at least five (5) bulk samples shall be collected from each homogeneous area.
5. If the homogeneous area of Suspect ACM is at least 5000 linear or 5000 square feet, at least seven (7) bulk samples must be collected from each homogeneous area.

C. LABORATORY ANALYSIS

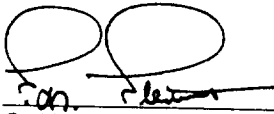
Samples shall be analyzed only by an EPA-accredited laboratory listed in 54 Fed. Reg. 8468-82 (Tuesday, February 28, 1989).

D. SAMPLE RESULTS

area where samples are collected, exact location where each bulk sample is collected, dates when samples are collected, dates when samples are collected, homogenous areas where friable samples are collected, homogeneous areas where friable Suspect ACM is assumed to be ACM and has therefore not been sampled, homogeneous areas where nonfriable Suspect ACM is assumed to be ACM and has therefore not been sampled, and areas where samples taken were determined by an EPA-Accredited Laboratory to be ACM; -


- (c) a description of the manner used to determine sampling location, the name and signature of each inspector who collected the samples, and, evidence of his/her qualifications;
- (d) a list of the type of materials which make up each homogenous area (e.g., surfacing, thermal system insulation);
- (e) chain of custody forms identifying each sample taken; and laboratory reports for each asbestos bulk sample of ACM and Suspect ACM taken at the Demolition or Renovation Operation.

APPROVED:


C. N. CLEVERT
U. S. District Judge

2/25/99
Date

SOFRON B. NEDILSKY
Clerk


(By) Deputy Clerk